IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA 192 of 2007
Date of decision 16 .4.2007

Raghbir Singh .. Appellant

Versus

The Income Tax Appellate Tribunal, Chandigarh and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.Sukhwinder Singh, Advocate for the appellant.

M.M.Kumar, J.

This appeal filed under Section 260 A of the Income Tax Act, 1961 (for brevity 'the Act') prays for quashing order dated 26.10.2006 (Annexure P.1) passed by the Income Tax Appellate Tribunal (for brevity 'the Tribunal') holding that the deletion of Rs. 6,00,000/- by the Commissioner of Income Tax (Appeals) (for brevity 'the CIT(A)') which were added by the Assessing Officer by rejecting the genuineness of the gift, was absolutely incorrect. On the basis of the order passed by the Tribunal in ITA No.158 / Chandi/ 1997 in respect of assessment year 1993-94 the Assessee has claimed that following substantive question of law would arise for determination of this Court:

" 1. Whether the action of respondents No. 1 and 3 is arbitrary in assessing the income of the Appellant's wife as income in the hands of the Appellant ;

2. Whether the action of respondents no. 1 and 3 in not accepting the gift of Rs. 18,00,000/- given by S. Gurmit Singh to the appellant and his wife is discriminatory after having accepted the same for the assessment year 1990-91

for the gift of Rs.16.94 lacs received from Balwant Singh, father of the present donor; and

3. Whether the respondents no. 1 and 3 have not appreciated the facts and evidence properly, brought on record showing the genuineness of the gift."

On 31.3.1992, the appellant has filed his income tax return, for the assessment year 1993-94, declaring his total income at Rs.92,300/-. It was processed under Section 143(1)(a) of the Act on 8.5.1995. Thereafter search and seizure operations were carried out on 11.8.1995. The notices under Section 127 of the Act and notices under Sections 143(2) and 142(1) of the Act alongwith detailed questionnaire were issued to the appellant. He was asked to explain the amount of Rs. 6,00,000/- received by him in his bank account maintained with the Bank of Baroda, Parliament Street, New Delhi and Rs. 12,00,000/- received by the appellant's wife in her bank account. He filed reply to those notices and questionnaire by submitting all the requisite documents. The Assessing Officer passed the assessment order on 29.3.1996 under Section 143(3) of the Act by treating Rs. 18,00,000/- as income from undisclosed sources assessable to his income. The Assessing Officer also enhanced the house hold expenses from Rs. 83,700/- to Rs. 1,44,000/-.

The appellant challenged the order of the Assessing Officer before the CIT (A) and vide order dated 6.12.1996, the CIT(A) deleted the addition of Rs. 18,00,000/- in the hands of the assessee and also the addition of Rs. 60,300/- made on account of house hold expenses. With regard to deletion of Rs. 6,00,000/- received as gift by the appellant from one Gurmit Singh, the CIT(A) adopted the following reasoning:

" In the normal course, probably, receipt of such substantial gifts from foreigner could be viewed with great suspicion in the absence of blood relations in between the donor and the donee but in the present case, facts suggest that even though there is no blood relationship between the family of the assessee and that of Shri Gurmit Singh, but still two families are very close to each other and may be for the reasons as stated by the assessee that late Shri Balwant Singh, father of Gurmit Singh was the "DHARAM BHAI' of assessee's wife Mrs. Manjit Kaur and Mrs. Manjit Kaur tied "RAKHI" to Shri Balwant Singh. The possibility of some of the friendly relationship developing into closer than blood relationship, is very common and therefore, it cannot be said that only gifts given by blood relation could be considered as genuine and not gifts given by close friends with whom the relationship might have been developed even closer to that of blood relationship. Keeping in view the reliance placed by the AO on the decision of the Hon'ble Punjab and Haryana High Court, it is apparent that facts of the said case and that of assessee's case are nowhere comparable because gifts to assessee and his wife are not from a stranger and there is also nothing to show that donor has any more important liability to meet than giving the gifts to the assessee and his wife."

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" Taking into account that all transactions are through bank and through normal banking channel as also through the NRI A/C,

> there cannot be any doubt with regard to genuineness thereof, especially in view of the facts brought on record during the course of hearing before me and noted earlier. The facts clearly indicate that the AO had proceeded on incorrect presumption that the assessee could operate the NRI account and has issued cheque to himself and his wife. But the facts clearly indicate otherwise and support the claim of the assessee that the said NRI account has been operated only by Shri Gurmit Singh and not by the assessee. Therefore, the genuineness of transaction can also not be doubted."

Accordingly, the CIT(A) deleted the addition of Rs. 6,00,000/- as income in the hands of the appellant and Rs. 12,00,000/- as income in the hands of his wife because she was an independent assessee.

The revenue approached the Tribunal and the Tribunal has held that the burden to establish the genuineness of the gift was upon the assessee. It was for the assessee to prove the identity of the donor, his credit worthiness and genuineness of the gift. Referring to the enquiries made from Indian Overseas Bank, Janpath, New Delhi by the Assessing Officer, the Tribunal found that certain drafts have been purchased in Singapore by Shri T.P.Anand in cash and remitted to India for credit in the bank account opened in the name of S. Gurmit Singh. It was also found that S. Gurmit Singh, the donor, was having bank account in the same bank in Singapore namely Indian Overseas Bank from which demand drafts were purchased by Shri T.P.Anand on payment of US Dollars in cash. The Assessing Officer treated the gift as not genuine as the donor was not produced nor his

financial status could be established. The Tribunal also found that no fresh evidence could be produced before the CIT(A) unless the conditions specified in Rule 46A of the Income Tax Rules, 1962 were satisfied. The Tribunal still held that the additional evidence filed before the CIT(A) was not sufficient to satisfy the necessary burden which was required to be discharged by the assessee in regard to gifts. It could also not be established as to whether the money transferred to India is out of any known source of the income of the donor and that the donor was in a position to gift such an amount to the assessee out of love and affection. Only photo copies of the visiting card showing the alleged donor as Managing Director of one company and Director of another company were produced on record. Therefore, the gifts received by the appellant was not considered genuine and the order of the CIT(A) was not accepted. The deletion of Rs. 6,00,000/- amount by the CIT(A) was set aside and addition of Rs. 6,00,000/- was restored. However, the Tribunal held that addition of Rs. 12,00,000/- in the hands of the assessee on account of the gifts received by the wife of the assessee could not be justified because Smt. Manjit Kaur is a separate assessee. Therefore, the order of the CIT(A) to that extent was upheld. Even the order of CIT(A) making addition of Rs. 60,300/- on account of house hold expenses was also upheld.

We have learned counsel at a considerable length and regret our inability to accept his submissions. In the present case neither the capacity of the donor to make gift nor his identity and the source from where the gift is made, has been established. No special reason for gifting such a huge amount to the assessee and his wife has come on record. There are clear doubts which have been brought to surface as to why the draft was

purchased with US dollars at Singapore when the donor himself is having his bank account iun the same bank namely Indian Overseas Bank. The assessee has failed to produce any evidence to establish the known source of the income of the donor and genuineness of the gift. Therefore, we are not inclined to interfere in the well reasoned order passed by the Tribunal. The findings recorded by the Tribunal have not been shown to be perverse in any manner. The case pleaded is beyond human probabilities. The appeal is wholly mis-conceived and the same is accordingly dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

16.4.2007
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